

Revised 03/06 WDNV

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

FORM TO BE USED IN FILING A COMPLAINT
UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983
(Prisoner Complaint Form)

14 CV 6352W

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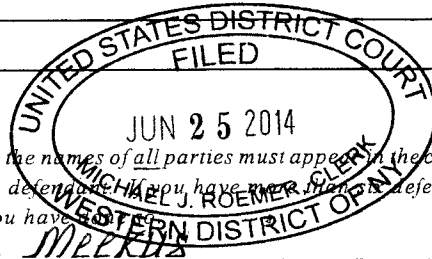
1. CAPTION OF ACTION

A. Full Name And Prisoner Number of Plaintiff: NOTE: If more than one plaintiff files this action and seeks in forma pauperis status, each plaintiff must submit an in forma pauperis application and a signed Authorization or the only plaintiff to be considered will be the plaintiff who filed an application and Authorization.

1. WALTER BALKUM

2. _____

-VS-



B. Full Name(s) of Defendant(s) NOTE: Pursuant to Fed.R.Civ.P. 10(a), the names of all parties must appear in the caption. The court may not consider a claim against anyone not identified in this section as a defendant. If you have more than one defendant, you may continue this section on another sheet of paper if you indicate below that you have.

1. JOHN P. LEONARD

4. ED. MEERDA

2. JOHN W. TURNBULL

5. LT. RICHARDS

3. K. HULETT

6. JOHN DOE

2. STATEMENT OF JURISDICTION

This is a civil action seeking relief and/or damages to defend and protect the rights guaranteed by the Constitution of the United States. This action is brought pursuant to 42 U.S.C. § 1983. The Court has jurisdiction over the action pursuant to 28 U.S.C. §§ 1331, 1343(3) and (4), and 2201.

3. PARTIES TO THIS ACTION

PLAINTIFF'S INFORMATION NOTE: To list additional plaintiffs, use this format on another sheet of paper.

Name and Prisoner Number of Plaintiff: WALTER BALKUM

Present Place of Confinement & Address: WENDT CORRECTIONAL FACILITY, P.D. BDX 1187,
ALDEN, NEW YORK 14004-1187

Name and Prisoner Number of Plaintiff: _____

Present Place of Confinement & Address: _____

DEFENDANT'S INFORMATION NOTE: To provide information about more defendants than there is room for here, use this format on another sheet of paper.

Name of Defendant: John P. Leonard

(If applicable) Official Position of Defendant: CORRECTION OFFICER

(If applicable) Defendant is Sued in ☒ Individual and/or ☐ Official Capacity

Address of Defendant: WENDE CORRECTIONAL FACILITY
3040 WENDE ROAD, ALDEN, NEW YORK 14004-1187

Name of Defendant: Tom W. Turnbull

(If applicable) Official Position of Defendant: CORRECTION SERGEANT

(If applicable) Defendant is Sued in ☒ Individual and/or ☐ Official Capacity

Address of Defendant: LAKEVIEW SHOCK INCARCERATION FACILITY
9300 LAKE AVE., BROCTON, NEW YORK 14716-9798

Name of Defendant: Lt. Richards

(If applicable) Official Position of Defendant: CORRECTION LIEUTENANT

(If applicable) Defendant is Sued in ☒ Individual and/or ☐ Official Capacity

Address of Defendant: LAKEVIEW SHOCK INCARCERATION FACILITY
9300 LAKE AVE., BROCTON, NEW YORK 14716-9798

- CONTINUE ON NEXT PAGE -

4. PREVIOUS LAWSUITS IN STATE AND FEDERAL COURT

- A. Have you begun any other lawsuits in state or federal court dealing with the same facts involved in this action?
Yes ☐ No ☒

If Yes, complete the next section. NOTE: If you have brought more than one lawsuit dealing with the same facts as this action, use this format to describe the other action(s) on another sheet of paper.

1. Name(s) of the parties to this other lawsuit:

Plaintiff(s): _____

Defendant(s): _____

2. Court (if federal court, name the district; if state court, name the county): _____

3. Docket or Index Number: _____

4. Name of Judge to whom case was assigned: _____

- CONTINUATION -

NAME OF DEFENDANT: K. Hulet
OFFICIAL POSITION: CORRECTION OFFICER
DEFENDANT SUED IN: INDIVIDUAL CAPACITY
DEFENDANT ADDRESS: Wende Correctional Facility
3040 Wende Road, Aiken, New York 14004-1187

NAME OF DEFENDANT: Meekus
OFFICIAL POSITION: CORRECTION OFFICER
DEFENDANT SUED IN: INDIVIDUAL CAPACITY
DEFENDANT ADDRESS: LAKEVIEW Shock Incarceration
Facility, 9300 Lake Ave., Brocton, N.Y. 14716-9798

5. The approximate date the action was filed: _____

6. What was the disposition of the case?

Is it still pending? Yes _____ No _____

If not, give the approximate date it was resolved. _____

Disposition (check the statements which apply):

_____ Dismissed (check the box which indicates why it was dismissed):

_____ By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;

_____ By court for failure to exhaust administrative remedies;

_____ By court for failure to prosecute, pay filing fee or otherwise respond to a court order;

_____ By court due to your voluntary withdrawal of claim;

_____ Judgment upon motion or after trial entered for

_____ plaintiff

_____ defendant.

B. Have you begun **any other lawsuits in federal court which relate to your imprisonment?**

Yes _____ No ✓

If Yes, complete the next section. NOTE: *If you have brought more than one other lawsuit dealing with your imprisonment, use this same format to describe the other action(s) on another sheet of paper.*

1. Name(s) of the parties to this other lawsuit:

Plaintiff(s): _____

Defendant(s): _____

2. District Court: _____

3. Docket Number: _____

4. Name of District or Magistrate Judge to whom case was assigned: _____

5. The approximate date the action was filed: _____

6. What was the disposition of the case?

Is it still pending? Yes _____ No _____

If not, give the approximate date it was resolved. _____

Disposition (check the statements which apply):

 Dismissed (check the box which indicates why it was dismissed):

- By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;
- By court for failure to exhaust administrative remedies;
- By court for failure to prosecute, pay filing fee or otherwise respond to a court order;
- By court due to your voluntary withdrawal of claim;

 Judgment upon motion or after trial entered for

- plaintiff
- defendant.

5. STATEMENT OF CLAIM

For your information, the following is a list of some of the most frequently raised grounds for relief in proceedings under 42 U.S.C. § 1983. (This list does not include all possible claims.)

- | | | |
|--------------------|--------------------------|-------------------------------|
| • Religion | • Access to the Courts | • Search & Seizure |
| • Free Speech | • False Arrest | • Malicious Prosecution |
| • Due Process | • <u>Excessive Force</u> | • Denial of Medical Treatment |
| • Equal Protection | • Failure to Protect | • Right to Counsel |

Please note that it is not enough to just list the ground(s) for your action. You **must** include a statement of the facts which you believe support each of your claims. In other words, tell the story of what happened to you but do not use legal jargon.

Fed.R.Civ.P. 8(a) states that a pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." "The function of pleadings under the Federal Rules is to give fair notice of the claim asserted. Fair notice is that which will enable the adverse party to answer and prepare for trial, allow the application of res judicata, and identify the nature of the case so it may be assigned the proper form of trial." Simmons v. Abruzzo, 49 F.3d 83, 86 (2d Cir. 1995). **Fed.R.Civ.P. 10(b)** states that "[a]ll averments of claim ... shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a single set of circumstances."

Exhaustion of Administrative Remedies

Note that according to **42 U.S.C. § 1997e(a)**, "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

You must provide information about the extent of your efforts to grieve, appeal, or otherwise exhaust your administrative remedies, and you must attach copies of any decisions or other documents which indicate that you have exhausted your remedies for each claim you assert in this action.

A. FIRST CLAIM: On (date of the incident) JUNE 17, 2011 AT 6:00 P.M.
 defendant (give the **name and position held** of each defendant involved in this incident) CD. LEONARD,
CD. HULETT, CD. MEERUS, CD. JOHN DOE AND Sgt. TURNBULL.

did the following to me (briefly state what each defendant named above did): While imprisoned in
A DDCLS TRANSPORTATION BUS (WED-75) PARKED WITHIN
LAKEVIEW SHOCK INCARCERATION FACILITY. PLAINTIFF WITHOUT
PROVOCATION WAS PHYSICALLY ATTACKED BY PUNCHES AND KICKS
BY DEFENDANTS LEONARD, HULETT, MEERUS, TURNBULL AND
JOHN DOE AS HE WAS IN FULL MECHANICAL RESTRAINTS. BASED
UPON SUCH PHYSICAL ATTACK PLAINTIFF SUSTAINED PHYSICAL, MENTAL
AND EMOTIONAL INJURIES.

The constitutional basis for this claim under 42 U.S.C. § 1983 is: THE EIGHTH AMENDMENT
TO THE UNITED STATES CONSTITUTION.

The relief I am seeking for this claim is (briefly state the relief sought): ONE MILLION DOLLARS IN
BOTH COMPENSATORY AND PUNITIVE DAMAGES FROM EACH
INDIVIDUALLY NAMED DEFENDANTS IN THE FIRST CLAIM.

Exhaustion of Your Administrative Remedies for this Claim:

Did you grieve or appeal this claim? ☒ Yes ☐ No If yes, what was the result? GRIEVANCE WAS
DENIED AT FACILITY LEVEL.

Did you appeal that decision? ☒ Yes ☐ No If yes, what was the result? GRIEVANCE WAS
DENIED BY CDRC.

Attach copies of any documents that indicate that you have exhausted this claim.

If you did not exhaust your administrative remedies, state why you did not do so: _____

A. SECOND CLAIM: On (date of the incident) JUNE 17, 2011 AT APPROXIMATELY 6:00 PM
 defendant (give the **name and position held** of each defendant involved in this incident) LT. RICHARDS

did the following to me (briefly state what each defendant named above did):

While within the LAKEVIEW SHOCK INCARCERATION FACILITY PLAINTIFF ADVISED DEFENDANT RICHARDS OF THE UNLAWFUL PHYSICAL ATTACK ON him by the defendants named in the First Claim. Defendant Richards AFTER LEARNING OF THE PHYSICAL ATTACK ON PLAINTIFF he FAILED TO CORRECT THE WRONG ACTS.

The constitutional basis for this claim under 42 U.S.C. § 1983 is: THE EIGHTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

The relief I am seeking for this claim is (briefly state the relief sought): ONE MILLION DOLLARS IN COMPENSATORY AND PUNITIVE DAMAGES FROM DEFENDANT RICHARDS.

Exhaustion of Your Administrative Remedies for this Claim:

Did you grieve or appeal this claim? ☒ Yes ☐ No If yes, what was the result? GRIEVANCE WAS DENIED.

Did you appeal that decision? ☒ Yes ☐ No If yes, what was the result? GRIEVANCE APPEAL WAS DENIED BY CDRL.

Attach copies of any documents that indicate that you have exhausted this claim.

If you did not exhaust your administrative remedies, state why you did not do so: _____

If you have additional claims, use the above format and set them out on additional sheets of paper.

6. RELIEF SOUGHT

Summarize the relief requested by you in each statement of claim above.

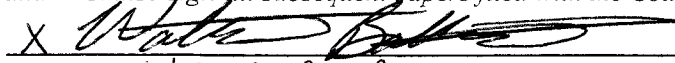
FIRST CLAIM: ONE MILLION DOLLARS IN BOTH COMPENSATORY AND PUNITIVE FROM EACH DEFENDANT.
SECOND CLAIM: ONE MILLION DOLLARS IN BOTH COMPENSATORY AND PUNITIVE DAMAGES FROM DEFENDANT RICHARDS.

Do you want a jury trial? ☒ Yes ☐ No

I declare under penalty of perjury that the foregoing is true and correct.

Executed on JUNE 16, 2014
(date)

NOTE: Each plaintiff must sign this complaint and must also sign all subsequent papers filed with the Court.

X 
WALTER BALKUM

Signature(s) of Plaintiff(s)